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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 05-18439-MG  
WILLIAM ROBERT PAWSON, . New York, New York  
Debtor. . Wednesday, August 13, 2008  
. . 10:02 a.m.  
. . . . .

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: David B. Shaev, Esq.  
Empire State Building  
350 Fifth Avenue, Suite 7210  
New York, New York 10118

For JPMorgan Chase Bank: Edward J. Lesniak, Esq  
BURKE, WARREN, MAC KAY &  
SERRITELLA, P.C.  
22nd Floor, IBM Plaza  
330 North Wabash Avenue  
Chicago, IL 60611

(Appearances continued)

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1 A P P E A R A N C E S: (Continued)

2  
3 For JPMorgan Chase  
4 Bank:

Edward A. Wiener, Esq.  
STEIN, WIENER & ROTH, LLP  
One Old Country Road  
Suite 113  
Carle Place, NY 11514

6 For the U.S. Trustee:

Andrew D. Velez-Rivera, Esq.  
U.S. DEPARTMENT OF JUSTICE  
Office of the U.S. Trustee  
33 Whitehall Street, 21st Floor  
New York, NY 10004

9 APPEARING VIA TELEPHONE:

10 For Chapter 13 Trustee:

Jody L. Kava, Esq.  
JEFFREY L. SAPIR  
399 Knollwood Road, Suite 102  
White Plains, NY 10603

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MOTION FOR APPROVAL OF SETTLEMENT  
AGREEMENT

6

1 (Proceedings commence at 10:02 a.m.)

2 THE COURT: All right. Please be seated. We're  
3 here in In Re William Robert Pawson. It's Number 05-18439.  
4 It's the hearing with respect to a proposed settlement of the  
5 debtor's cross-motion for sanctions.

6 Counsel, please make your appearances.

7 MR. SHAEV: David B. Shaev for the debtor, Your  
8 Honor.

9 THE COURT: Good morning, Mr. Shaev.

10 MR. LESNIAK: Good morning, Your Honor. Edward  
11 Lesniak for JPMorgan Chase Bank. Also present in the  
12 courtroom, Your Honor, from JPMorgan Chase Bank is Mr. Jim  
13 Berg (phonetic), who is a vice president and assistant  
14 general counsel.

15 THE COURT: Good morning, Mr. Lesniak and Mr. Berg.

16 MR. WIENER: Edward Wiener for JPMorgan Chase Bank  
17 from Stein, Wiener & Roth.

18 THE COURT: All right, Mr. Wiener.

19 MR. VELEZ-RIVERA: Good morning, Your Honor. Andrew  
20 Velez-Rivera for the United States Trustee.

21 THE COURT: Good morning, Mr. Velez-Rivera.

22 MS. KAVA: (Via telephone) Jody Kava for the  
23 Chapter 13 trustee.

24 THE COURT: Good morning, Ms. Kava.

25 MS. KAVA: Thank you for letting me appear by

1 telephone, Your Honor.

2 THE COURT: Certainly.

3 All right. This matter was on the calendar last  
4 Thursday, a regular Chapter 13 day. There may have been some  
5 confusion whether the matter was going to be on or not. A  
6 proposed stipulated order had been provided to the Court in  
7 advance of the hearing that would have resolved the cross-  
8 motion for sanctions. It was a cross-motion to JPMorgan  
9 Chase's motion to lift the automatic stay.

10 During the hearing last Thursday, Mr. Shaev  
11 appeared, and I indicated on the record that I was not  
12 prepared to approve the stipulated order. And I cited -- and  
13 there is a copy of the transcript that's on -- you can all  
14 have a seat, please. I cited in the record a copy of Judge  
15 Lynch's decision in the District Court in Geltzer v. Anderson  
16 Worldwide, which is at 2007 WL, 273526. It's a January 2007  
17 decision when he declined to approve a Rule 9019 motion to  
18 approve a settlement between Robert Geltzer, a Chapter 7  
19 trustee, and Anderson Worldwide and Arthur Anderson in  
20 connection with Asia Global Crossing.

21 And I also, I believe, mentioned on the record my  
22 prior decision in In Re Food Management Group, LLC, which is  
23 at 359 BR 543, a 2007 decision which involved 11 U.S.C.  
24 Section 107, which is the Bankruptcy Code section that deals  
25 with sealing.

1 I indicated on the record that -- and entered an  
2 order after the hearing last Thursday setting the matter for  
3 hearing today. Other than Mr. Lesniak's pro hac vice  
4 application, there were no other filings that relate to the  
5 proposed settlement.

6 Mr. Shaev, do you want to be heard?

7 MR. SHAEV: Yes, Your Honor. Just in general, the  
8 Court is well aware of the facts that led to this cross-  
9 motion. But we've had very fruitful discussions very quickly  
10 in this matter, and Chase did step up rather quickly to  
11 settle this to, hopefully, mitigate against the damages they  
12 owe to my client.

13 Part of the settlement is a correction of their  
14 credit reports and a statement of their mortgage. There's a  
15 whole slew of things that are very important to my client and  
16 myself on behalf of the client. And my worry is that my  
17 clients would be prejudiced in some fashion if this matter is  
18 not quickly brought to conclusion.

19 THE COURT: Right. Thank you, Mr. Shaev.

20 Who wants to speak on behalf of Chase?

21 MR. LESNIAK: I would like to, Your Honor. Thank  
22 you.

23 THE COURT: Go ahead, Mr. Lesniak.

24 MR. LESNIAK: Thank you, Your Honor. And thank you  
25 for so quickly executing my petition to be heard pro hac

1 vice. Things are moving pretty quickly in this matter, and I  
2 appreciate that. It's an honor to be here to address you on  
3 this.

4 I thought it would be helpful, if I could, to take a  
5 moment to just make it crystal clear what exactly led to this  
6 court hearing and what we are asking the Court to do and what  
7 we are not asking the Court to do.

8 When this matter first came to Chase's attention,  
9 Chase asked me to get involved. We quickly became involved  
10 and had very fruitful, very professional, very respectful  
11 negotiations with Mr. Shaev. And we were very quickly able  
12 to reach a resolution of the cross-motion that's pending.  
13 And that led to a settlement agreement.

14 Mr. Shaev --

15 THE COURT: Not presented by a Rule 9019 --

16 MR. LESNIAK: No, Your Honor --

17 THE COURT: It was resolved by a --

18 MR. LESNIAK: I will get to that, Your Honor, but  
19 that's correct. It's not a 9019, it's not a trustee's  
20 motion, it's not brought in any fiduciary capacity. We  
21 consider the matter to be a private matter between Chase and  
22 the debtor. This concerns an action that was taken by Chase  
23 to which the debtor objected, a post-petition action. The  
24 debtor said, I have a claim here because of this conduct.  
25 And whether that's accurate or not, we decided to reach a

1 settlement of it which really only affects two parties:  
2 Chase and the debtor.

3 As I understand it, this is a 100 percent plan.  
4 There are no payments being made to Chase in the Chapter 13  
5 plan. It seems to me that the Chapter 13 trustee would have  
6 no apparent interest in this matter. It's purely a matter  
7 between Chase and the debtor.

8 Now, to get to this point, as part of the  
9 settlement, Mr. Shaev said, okay, Chase is agreeing to do  
10 certain things I want, certain things that are set out in the  
11 proposed stipulated order. And he said to me quite honestly,  
12 we want more than just Chase's agreement, we would like you  
13 to submit this to -- we'd like this submitted to the  
14 Bankruptcy Court and have the force and effect of a Court  
15 order. And we said, okay, we will agree to that.

16 So what we were asking the Court to do is, in aid of  
17 a settlement that is very favorable to the debtor, to order  
18 Chase to do certain things that are part of the settlement  
19 agreement. We do not feel, because there's certainly not a  
20 9019 motion, it's not a 4001 motion that's perhaps in  
21 settlement of a relief of stay issue. The motion for relief  
22 of stay has been withdrawn, was withdrawn back in July. So  
23 it's not anything that requires Court approval. So we are  
24 not by this order asking the Court to approve the settlement  
25 or to pass on the fairness of the settlement.



1           We are not asking the Court to seal the settlement  
2 because we are not asking to file it.

3           THE COURT: Well, you don't have anything in the  
4 order that you'd care about sealing. You left that out.

5           MR. LESNIAK: Well, Judge, because we're not -- to  
6 ask something be put under seal would be -- something would  
7 be filed. We do not intend to file the settlement agreement.  
8 So there's no reason to --

9           THE COURT: You're asking for my approval. You're  
10 asking for me to sign a stipulated order. You're asking for  
11 the Court to approve a stipulated order that has certain  
12 terms that require Chase to do certain things with respect to  
13 the debtor. So you're looking for the Court's imprimatur on  
14 partially disclosed terms of a settlement.

15           MR. LESNIAK: Well, it's at the debtor's request.  
16 Yes, Your Honor. We are asking the Court to order Chase to  
17 do certain things.

18           THE COURT: See, Mr. Lesniak, and I'll be very  
19 candid; when I saw the cross-motion and I read the motion to  
20 lift the automatic stay, which unlike in the Schuessler case  
21 before Judge Morris, Chase, I think, had the good sense to  
22 withdraw the lift-stay motion pretty quickly here.

23           But I reviewed the lift-stay motion, I reviewed the  
24 cross-motion, and I think I said this on the record last  
25 week, that I came very close to entering an order to show

1 cause why Chase and its counsel of record, which was not you,  
2 should not be sanctioned without regard to whether Mr. Shaev  
3 was able to work out matters between his client and Chase.  
4 The Court has a very strong interest in any pleadings filed  
5 in this court, particularly motions to lift stay, that ask  
6 for affirmative relief from the Court. Simply withdrawing a  
7 motion -- and I have no basis on which to decide now whether  
8 the motion was well taken or not well taken.

9 But when you file a motion that asks for affirmative  
10 relief from the Court, counsel who signs the motion  
11 undertakes certain obligations to the Court. Certainly, the  
12 signature on the motion and any supporting papers immediately  
13 under 9011 imposes obligations on the parties filing the  
14 motion. The Court's inherent power comes into play. A whole  
15 host of issues come into play.

16 So I was certainly -- before Mr. Shaev -- and,  
17 certainly, Mr. Shaev had attached Judge Morris's decision in  
18 Schuessler to his cross-motion. I was very familiar with the  
19 Schuessler decision, as I think all of my colleagues in the  
20 Southern District of New York are very familiar with it.

21 And I didn't -- I figured, well, the motion will  
22 come on for hearing -- the cross-motion will come on for  
23 hearing and I wanted to hear what was going to be said at  
24 that time. Then I was advised that -- before I even saw the  
25 stipulated order that a settlement of the cross-motion had

1 been reached, that Mr. Shaev had declined initially to  
2 withdraw the cross-motion, that a settlement had been  
3 reached. It was in the form presented.

4 I'm certainly open to considering whether to approve  
5 a settlement, but as I indicated last week, my signature does  
6 not go on any order in this case that I don't know all the  
7 terms, unless you file a motion under 107(b) to seal. Since  
8 none has been filed, I guess I don't have reason to rule on  
9 it. But I did call Mr. Shaev's attention, and I'm sure  
10 you've seen the transcript from last week, to Judge Lynch's  
11 decision, which is -- the only thing that distinguishes this  
12 case from Anderson Worldwide is that, here, you didn't file a  
13 9019, you simply asked for me to sign a stipulated order.  
14 And I'm not sure that that's appropriate.

15 MR. LESNIAK: Your Honor, if I may respond to that -  
16 -

17 THE COURT: Go ahead, Mr. Lesniak. Go ahead.

18 MR. LESNIAK: Those are excellent points, Judge, and  
19 I would like to have an opportunity to respond to them.

20 THE COURT: Yeah.

21 MR. LESNIAK: In terms of the last point you raised,  
22 there is language at the beginning of the Geltzer case which  
23 specifically discusses that, under normal circumstances,  
24 settlements between parties that only affect those parties  
25 are generally not a matter for public record.

1           There is also some language that says that the Court  
2 takes a little bit more interest when there is a so-ordered  
3 judgment. To the extent this falls within that realm, we  
4 appreciate that. And our settlement agreement allows for us  
5 to disclose the settlement agreement in camera. We have a  
6 confidentiality agreement, however, that would preclude us,  
7 at this stage, from filing it in the public records.

8           So we are certainly not trying to hide the agreement  
9 from this Court.

10           THE COURT: That was true in Geltzer as well, and  
11 Judge Lynch -- the parties were willing to show the agreement  
12 to Judge Lynch in camera, and he didn't have any trouble  
13 disposing of that argument.

14           MR. LESNIAK: I understand that, Judge. But I  
15 believe that the circumstances -- and I would suggest that  
16 the circumstances are very different. In 9019 -- and Geltzer  
17 was a 9019 motion that was made by a trustee who was settling  
18 a pre-petition claim, the results of which would affect how  
19 much was paid out to numerous creditors. So the Court was in  
20 the position -- and I certainly understand the Geltzer case  
21 and really agree with it. How can a judge be expected to  
22 approve a settlement that affects a large group of people  
23 without knowing what the dollar amount is?

24           That is distinguishable from this particular case  
25 where the only two parties involved are Chase and the debtor,

1 and Mr. Pawson. So we believe that it's a very different  
2 circumstance.

3 We are not asking the Court to approve the  
4 settlement. The matters that were raised that we're asking  
5 the Court to order are those things that the debtor felt  
6 strongly about needing Court protection on, and so we agreed  
7 to do that in aid of the debtor's request and in getting this  
8 settlement done. So I think there is a significant  
9 distinction between this case and the 9019 situation  
10 addressed in that particular -- in the Geltzer case.

11 And as I say, we are perfectly amenable to  
12 disclosing the agreement to the Court in chambers so you can  
13 satisfy yourself that it's a settlement that's good for the  
14 debtor. We've probably disclosed in the Court order about  
15 ninety percent of the terms of the settlement, so there's not  
16 a lot left, but you're welcome to see that. That was our  
17 understanding with the debtor. And we would Certainly live  
18 by that.

19 As for the rule to show cause situation, Judge,  
20 nothing that we've -- that we were doing in connection with  
21 the settlement is intended in any way, nor could it affect  
22 the Court's ability to take whatever action it felt  
23 appropriate. We understand that you have that power, and if  
24 you choose to exercise that under these particular facts and  
25 circumstances, that's the Court's determination and we would

1 address it at that time.

2 But other than that, Judge, I don't think it would  
3 be fair for me to make any comment on the underlying facts  
4 because from what I'm hearing, it may ultimately go to an  
5 evidentiary hearing. So I don't think I can comment any  
6 further on it.

7 THE COURT: Well, I'm not sure I agree with that  
8 last statement because I fully intended -- if you or someone  
9 else had appeared last Thursday, I fully intended to ask  
10 about the underlying facts and circumstances here, and I'm  
11 going to do that right now.

12 MR. LESNIAK: Okay.

13 THE COURT: And either you or -- is it Mr. Wiener or  
14 --

15 MR. WIENER: Mr. Wiener. Mr. Wiener, your firm is  
16 counsel of record on --

17 MR. WIENER: That's correct.

18 THE COURT: All right. Your Honor, in Schuessler,  
19 what Judge Morris there was faced with was a debtor who had  
20 been making payments in a Chase branch, and at some point --  
21 I won't recount the whole history; it's a lengthy sixty-age  
22 opinion -- Chase declined to accept the payments in the  
23 branch for the reasons that Judge Morris explores.

24 I this matter, as I understand it, the debtor had  
25 been making payments online rather than bringing them into a

1 branch, and there was a history of making the payments  
2 online, which had been accepted until the two payments on  
3 which Mr. Wiener's firm moved to lift the stay, claiming that  
4 there were post-petition defaults that were, in fact,  
5 payments that had been attempted to be made but weren't  
6 accepted.

7 Tell me what Chase's policy is with respect to  
8 payments online. I, you know, read Schuessler. I understand  
9 they had some policy about not accepting payments in a  
10 branch. And I want to know what the policy is with respect  
11 to payments by a debtor online. The excuses that were given  
12 in Schuessler for not accepting them in the branch was, well,  
13 you know, an employee in a branch might violate the automatic  
14 stay by asking questions. Well, when you pay online, there's  
15 nobody to ask you questions. I mean, what's the policy? Why  
16 weren't -- do you agree that the payments were not accepted  
17 online here?

18 MR. LESNIAK: Yes, Your Honor. There's a little  
19 more history to it as I understand it. Okay? And I want to  
20 make it clear that this is as I understand looking at the  
21 facts.

22 THE COURT: If Mr. Wiener needs to address it, he  
23 can. I'll let one -- you know, either one or both of you  
24 talk about it.

25 MR. LESNIAK: I'll address it, Judge, and --

1 THE COURT: Go ahead, Mr. Lesniak.

2 MR. LESNIAK: -- and subject to correction from Mr.  
3 Berg if I get anything wrong.

4 But as I understand it, after this case was filed,  
5 Mr. Pawson was notified that payments would only be accepted  
6 in a certain fashion. And that fashion included by check, I  
7 believe by Western Union, but would not be accepted online.  
8 Mr. Pawson bided by that from 2005 until sometime in 2007.

9 Then, in 2007, he tried to make an online payment,  
10 and contrary to the way the account should have been coded,  
11 the payment was allowed to go through. Mr. Pawson continued  
12 to make payments online thereafter until he became two months  
13 delinquent and, under its guidelines, Chase referred the  
14 matter out to a motion for relief from the stay.

15 THE COURT: Did he become two months delinquent, or  
16 did Chase reject two payments that he made? Mr. Shaev, in  
17 his objection and cross-motion, argued that the payments --  
18 that looking at the payment history, the payments were  
19 timely, but were rejected -- the online payments, but the two  
20 payments were rejected.

21 MR. LESNIAK: That is not our position, Your Honor.  
22 The position is that the borrower, Mr. Pawson, was in fact  
23 two months delinquent at the point in time when Chase  
24 referred the matter out for the filing of a motion for  
25 relief.



1           Shortly thereafter, Mr. Pawson attempted to make a  
2 payment online, and that was rejected.

3           After that, he tried to make another payment online,  
4 I believe the same day that the motion for relief was filed,  
5 on or about the same day that the motion for relief was  
6 filed. He then contacted Chase -- I think on the 24th of  
7 June he contacted Chase. Chase informed him that payments  
8 would not be accepted online because the matter had been  
9 referred out to counsel for a motion for relief.

10           The next day, Chase received a check, on the 25th of  
11 June, I believe, Chase received a check for the two months  
12 delinquent. And, subsequently, Chase withdrew its motion for  
13 relief because the account had then been brought current.  
14 And my understanding is the account is presently current --  
15 in a current status.

16           So there's some fluidity there where the matter is  
17 referred out, and then the borrower sends payment, and  
18 there's some reaction time involved in making sure those  
19 payments are recognized, and then withdrawing the motion,  
20 which Chase did. When the debtor came current, Chase  
21 withdrew the motion.

22           It was not a situation where the failure to accept  
23 an online payment caused the borrower to go two months in  
24 default. He was two months in default at the time he tried  
25 to make the first online payment that was rejected.

1 THE COURT: Thank you, Mr. Lesniak.

2 MR. LESNIAK: Thank you.

3 THE COURT: Mr. Wiener, I have some questions for  
4 you. I take it the notary who notarized various documents in  
5 this case works in your office?

6 MR. WIENER: Your Honor, that actually is an issue  
7 that I was going to address when Mr. Lesniak was finished.  
8 That was clearly a scrivener's error, if you were, as to what  
9 happened in the case.

10 The affidavit was forwarded to Chase, it was  
11 executed by an officer of Chase in Ohio --

12 THE COURT: Mr. Keete (phonetic)?

13 MR. WIENER: Mr. Keete. Notarized in Ohio, and  
14 transmitted back to us. Our office -- or instead of scanning  
15 in the signed sheet with the affidavit and the notary on it,  
16 as a policy of putting on the "S" and the signature and the  
17 name. And in this particular case, the paralegal transcribed  
18 the notary information from the individual who mailed out the  
19 motion for relief. If you look at the name on the affidavit  
20 of service for the motion for relief, it is the same  
21 incorrect notary on the affidavit.

22 THE COURT: I looked at that.

23 MR. WIENER: And, clearly, it was an error. But  
24 there was no -- the affidavits were all pre-signed according  
25 -- not pre-signed. They were all signed, forwarded back to

1 us, and then filed in accordance with the Court's rules. It  
2 was a transcription error, and our apologies to the Court for  
3 doing that. But there was nothing done improper in terms of  
4 having pre-signed affidavits or -

5 THE COURT: The worksheet that M-347, our general  
6 order requires was included. I looked at it again this  
7 morning. The online -- when it's filed on ECF, it didn't  
8 have a signature or even the slash with a signature. Now it  
9 may have been that the actual -- let me look in the file here  
10 and see whether the one in the file -- it may be that what's  
11 online is not what's in the file. Just give me a second.

12 (The Court reviews documents.)

13 THE COURT: No, there is a signed one in the file.  
14 When I looked online this morning, the one that was online  
15 didn't have a signature. And that, of course, shows the  
16 Columbus, Ohio --

17 MR. WIENER: Correct.

18 THE COURT: Mr. Shaev made much of the -- that  
19 overstates it. Mr. Shaev in his objection and cross-motion  
20 pointed out that your -- I assume it's your associate who  
21 signed a declaration or an affidavit that was part of your  
22 moving papers that has the boilerplate language about lack of  
23 adequate protection for this million-dollar apartment with a  
24 two-hundred-thousand-dollar loan that may or may not have  
25 been two months in arrears. And what basis did she have to

1 make the statements that she made in her affidavit?

2 MR. WIENER: Well, Judge, clearly, there does appear  
3 to be sufficient equity in this property. There's a  
4 tremendous amount of equity.

5 THE COURT: I would think so.

6 MR. WIENER: We're not going to argue that. But I  
7 think we also need to look at -- this is not a Chapter 7.  
8 This is a Chapter 13. And I think that the basis for seeking  
9 the relief here was the disputed payments and the disputed  
10 arrears and whether, in fact, that they were in arrears.

11 THE COURT: None of that, of course, was revealed to  
12 the Court until Mr. Shaev filed his objection.

13 I mean, the thing -- Mr. Wiener, Mr. Lesniak, I  
14 mean, the thing that most bothers me about this is this  
15 debtor has very able counsel. Mr. Shaev appears before me  
16 regularly on the Court's Chapter 13 calendar. And he is a  
17 very able lawyer who represents his clients to the fullest  
18 and protects their rights and is very vigorous in protecting  
19 their rights.

20 What I worry about is this very long lift-stay  
21 calendar I have every two weeks with many pro se debtors, or  
22 some represented by counsel who, for whatever reason, are not  
23 as tenacious or vigorous in their defense of their clients as  
24 Mr. Shaev is for his. And so, you know, when Judge Morris  
25 early in her opinion said, this opinion serves as a warning,

1 the warning seems to have been unheeded.

2 If someone in your office before filing this motion  
3 had looked at the ECF docket and seen that Mr. Shaev was  
4 counsel of record and picked up the phone and called Mr.  
5 Shaev and said, you know, we're about to file a motion to  
6 lift the automatic stay because two payments in arrears,  
7 before we file the motion can you tell me what the situation  
8 is, Mr. Shaev would have undoubtedly very quickly gotten back  
9 to you and said, no, no, no, here is the explanation, the  
10 client sought to make the payments online, they were  
11 rejected, or let me see -- you know, send me a copy of the  
12 payment history, let's look at it and figure it out.

13 This motion should never have been filed. And the  
14 statements that were made in support of the motion never  
15 should have been made. And when Judge Morris, in Schuessler,  
16 in the strongest possible terms -- let me find it. It's on  
17 Page 76 of the -- Judge Morris's decision that appears  
18 online. It's not the Westlaw version, but Judge Morris says  
19 on Page 6, quote:

20 "A creditor's inattentiveness can be just as abusive  
21 of process as an intentional act of misconduct.

22 Under the facts in this case, the actions of the  
23 mortgage servicer constituted an abuse of process  
24 that this Court has a duty to rectify pursuant to 11  
25 U.S.C. Section 105(a), regardless of whether or not

1           the abuse is the result of intentional conduct.  
2           This lengthy introduction and the Court's findings  
3           of facts set forth below are intended to serve as a  
4           warning to all creditors that, in this Court's view,  
5           the conduct of the mortgage servicer in this case,  
6           including acts that were taken and not taken by its  
7           employees, agents and attorneys constituting abuse  
8           of process."

9           I'll end the quote there.

10          So in the strongest possible terms, Judge Morris  
11       certainly put Chase on notice that -- and I'm not saying the  
12       conduct here -- I haven't had an evidentiary hearing --  
13       whether the facts here are the same as in Schuessler, I'm not  
14       prepared to say at this point. But I can't fathom why lift-  
15       stay motions get filed in a case like this without somebody  
16       picking up the phone and calling counsel of record and  
17       alerting them.

18          The only possible reason I see is that this machine  
19       spits out motions and counsel get paid for making motions,  
20       not for making a phone call to the debtor's counsel. And,  
21       hence, the Court finds on its docket still another lift-stay  
22       motion that never should have been made.

23          Even if I accept Mr. Lesniak's representations as to  
24       the facts as to whether this debtor was two months in arrears  
25       when the online payments were rejected or not, once the

1 debtor -- I mean, it seems a matter of record that the debtor  
2 attempted to make the payments online. Whether they were  
3 timely or not, I don't have to decide for now. I mean, I  
4 can't fathom it.

5 MR. LESNIAK: Your Honor, may I respond to that?

6 THE COURT: Go ahead, Mr. Lesniak.

7 MR. LESNIAK: Just a couple of things, Judge,  
8 because the concerns are obviously very legitimate ones, and  
9 Chase is very well aware of those concerns in the Schuessler  
10 case.

11 A couple of points I would like to make. The Court  
12 is absolutely correct, and we've had discussions about that  
13 this morning, that it would have been a good idea to pick up  
14 the phone and call Mr. Shaev. However, in fairness to Chase,  
15 I would just also like to point out that it probably would  
16 have been a good idea for Mr. Shaev to pick up the phone and  
17 call Chase's counsel and say, by the way, do you know my  
18 client just sent in two payments. So I do think it's a two-  
19 way street that I would ask the Court to be mindful of.

20 THE COURT: Chase is the one who filed the motion to  
21 lift the automatic stay. Don't put it on Mr. Shaev's  
22 shoulders.

23 MR. LESNIAK: I'm not -- I'm not putting it on his  
24 shoulders, Judge.

25 THE COURT: Did he know you were going to file --

1 you didn't do it personally, I understand. Your firm is  
2 national counsel to Chase. Do I understand that correctly?

3 MR. LESNIAK: Yes, Your Honor.

4 THE COURT: And Mr. Wiener's firm is local counsel?

5 MR. LESNIAK: Is the local counsel.

6 THE COURT: Did your firm prepare the papers, or Mr.  
7 Wiener's firm?

8 MR. LESNIAK: No, we don't prepare those, Judge.

9 THE COURT: All right.

10 MR. LESNIAK: But in addition to that, Chase is very  
11 mindful of these concerns. And Chase is taking steps to  
12 address these specific concerns.

13 Now Chase services over three million mortgages. So  
14 sometimes the boat moves a little slower than we'd like. But  
15 Chase is taking steps to address this, and I can be specific.

16 First, Chase does a lot of loan servicing. And it  
17 is negotiating with its investors to change the guidelines  
18 that it is obligated in its servicing agreements to follow  
19 with respect to filing motions for relief. The reason Chase  
20 files the motion when the debtor is two months behind is  
21 because that's what required of it by its investors when it's  
22 servicing loans.

23 Chase is negotiating to extend that period out to  
24 three or four months behind so we have a clearer record of  
25 default to avoid these types of situations. Point Number 1.



1           THE COURT: That wouldn't solve a problem about  
2 rejected payments.

3           MR. LESNIAK: It wouldn't, Judge. But I think  
4 you're -- the situation you have here is when you're one or  
5 two months behind, that may be easier to catch up. I think  
6 when you fall three or four months behind, it's a better  
7 indication that this borrower is not able to keep current.  
8 And so we would -- Chase is negotiating to extend out that  
9 time frame so you don't have these perfect storm situations  
10 where somebody is trying to send you the payment, or they're  
11 sending you the payment at the same time that you're filing  
12 the motion.

13           Point Number 2: Chase has hired an in-house counsel  
14 whose job is specifically to review all of the motions filed  
15 in New York, all of the motions for relief after they're  
16 prepared by local counsel so that there is another set of  
17 attorneys' eyes in-house at Chase. Unfortunately, that  
18 person was not in place and functioning yet at the time this  
19 matter was -- came up. But Chase is looking to address these  
20 situations so we don't have another situation that causes the  
21 Court this type of concern.

22           THE COURT: Mr. Wiener's papers are perfectly fine  
23 on their face. It's only if one goes behind them -- I mean,  
24 what is -- you know, if in-house -- what was in-house counsel  
25 supposed to do when they looked at -- what would they do if

1 they looked at Mr. Wiener's papers? I mean, the papers look  
2 proper. It's only when you find out the background and you  
3 find out that two payments online were rejected -- whether it  
4 was when there was already a default, whether there was not a  
5 default is almost beside the point. It was certainly before  
6 the lift-stay motion was filed.

7 MR. LESNIAK: Well, that's the kind of information  
8 that in-house counsel would have access to, Judge: The  
9 customer service notes, the attempts to make payments online,  
10 knowing more currently exactly what is the situation on that  
11 particular day before the motion is filed.

12 So I think it would make a significant difference in  
13 trying to -- combining those two factors would make a  
14 significant difference in trying to address these types of  
15 situations.

16 THE COURT: Is that procedure in place currently?

17 MR. LESNIAK: That's my understanding, Your Honor.  
18 Mr. Berg can address that. It was not at the time the Pawson  
19 matter was filed. That person was in the process of being  
20 hired. That person is in place now.

21 THE COURT: All right. Let me hear -- Ms. Kava, on  
22 the issue of confidentiality of the terms, do you want to be  
23 heard on that?

24 MS. KAVA: I just have a problem, Your Honor, with  
25 the fact -- what was said almost at the beginning of the

1 conversation, which was that this is just between two parties  
2 and the Chapter 13 trustee is not -- should not be involved  
3 at all. The Chapter 13 trustee is involved in every Chapter  
4 13, and I think the trustee is entitled to all information  
5 that's available.

6 If Your Honor wants to hold on to information  
7 yourself, that's of course fine. But I have a hard time  
8 taking it that the Chapter 13 trustee should have no interest  
9 in this case. If the debtor is not making his mortgage  
10 payment, that's certainly an issue for the trustee. It goes  
11 to whether or not he's complying with his plan. So it's not  
12 a two-party dispute. The trustee is absolutely taking a very  
13 strong interest in this.

14 MR. SHAEV: Your Honor, may I?

15 THE COURT: Let me ask Mr. Velez-Rivera first, and  
16 then I'll give you a chance, Mr. Shaev.

17 MR. VELEZ-RIVERA: Thank you, Your Honor. I'll  
18 follow up on Ms. Kava's point, actually. It's one of the  
19 matters I desire to address with the Court.

20 The matter was actually brought to our office very  
21 recently. But we've reviewed the file this morning, and  
22 based on what we can see, the argument that this is a private  
23 matter is astonishing. Bankruptcy is, if nothing else, life  
24 in a fish bowl. My office hasn't seen either the proposed  
25 order which Your Honor has or the underlying settlement

1 agreement.

2 THE COURT: The only thing I have is a proposed  
3 stipulated order that -- and it's not online. It was  
4 provided to the Court last week before the hearing.

5 MR. VELEZ-RIVERA: We also disagree vehemently with  
6 the premise that this matter affects only two parties. As  
7 Ms. Kava said, the Chapter 13 trustee would be the third  
8 party, and with the integrity of the bankruptcy process  
9 overwhelmingly at issue, nothing else in the entire  
10 bankruptcy system is also a participant in the proceedings,  
11 not to mention my own client.

12 THE COURT: Yeah, I would -- you know, 9019(a) --  
13 people can address whether that applies here or not, but  
14 9019(a) provides that on a motion -- quote:

15 "On motion by the trustee and after notice and a  
16 hearing, the Court may approve a compromise or  
17 settlement. Notice shall be given to creditors, the  
18 United States Trustee, the debtor, and indenture  
19 trustees as provided in Rule 2002, and to any other  
20 entity as the Court may direct."

21 So in any 9019 settlement, your office receives  
22 notice of it. It's not clear to me whether 9019, by its  
23 terms, applies here or not. I'm not prepared to -- no such  
24 motion was made here. It is a question I have as to whether  
25 any time you're asking it's acknowledged to be a settlement,

1 the Court is being asked to approve it and sign. I don't  
2 understand why 9019 doesn't apply.

3 Go ahead, Mr. Velez-Rivera.

4 MR. VELEZ-RIVERA: On its face, Your Honor, we  
5 haven't seen all of the papers. But we have a conceptual  
6 difficulty getting there, as well.

7 In any event, even assuming that hurdle can be  
8 jumped over, we still have the sealing issue before us. Your  
9 Honor is being asked to place -- to exclude something from  
10 the record which underlies the stipulated order in front of  
11 you. We haven't seen either one. We can't pass on the  
12 sealing -- on the paper that's being sealed, obviously,  
13 without seeing it. And I don't think the Court can do that,  
14 either.

15 We have, as Your Honor knows, a longstanding  
16 vigilance over sealing motions in Your Honor's courtroom, and  
17 every other courtroom in this building. We'd like to, if the  
18 Court gets there, have an opportunity to pass on that.

19 THE COURT: Thank you, Mr. Velez-Rivera.

20 MR. VELEZ-RIVERA: Thank you.

21 THE COURT: Mr. Shaev?

22 MR. SHAEV: Your Honor, I do have just one point I  
23 want to make in reference to the Chapter 13 trustee. I don't  
24 think anyone was alluding to the fact that the standing  
25 trustee has no position in this matter. I think the point

1 being made was that this is a hundred-percent payment plan,  
2 there's no plan arrearage, no creditors being affected, no  
3 party but actually the individuals involved in it. I think  
4 that was the intent of that statement.

5 MS. KAVA: But, Mr. Shaev, the debtor is not making  
6 his mortgage payments. Isn't that part of his budget? Isn't  
7 the trustee supposed to be aware of that? Maybe he's not  
8 making other payments to other creditors that he's supposed  
9 to be paying outside the plan.

10 THE COURT: But the plan Certainly provides that  
11 secured creditors are to be paid outside the plan. If the  
12 debtor doesn't do it, it's a default on the terms of the  
13 plan. While the payments don't go to the trustee, it's still  
14 -- I mean, I do get lift-stay motions in post-confirmation  
15 matters where the creditor is arguing under 362(d)(1) --  
16 well, you know, they argue that they've breached the plan.  
17 That's a basis for lifting the stay. So --

18 MR. LESNIAK: Your Honor, may I respond further if  
19 Mr. Shaev is done?

20 THE COURT: Certainly, Mr. Lesniak.

21 MR. LESNIAK: With respect to the Chapter 13  
22 trustee, Judge, what we're saying is that the settlement does  
23 not affect the Chapter 13 trustee. If payments aren't being  
24 made, certainly the Chapter 13 trustee would receive notice  
25 of the motion for relief. Nothing in the settlement involves

1 payments. It's a settlement of the debtor's claim on the  
2 cross-motion.

3 THE COURT: Are any payments being made to the  
4 debtor or the debtor's counsel under the terms that have not  
5 been disclosed to the Court?

6 MR. LESNIAK: Is a payment of money being made?

7 THE COURT: Yes.

8 MR. LESNIAK: Yes, it is, Your Honor. There's a  
9 lump-sum payment of money that's being made to the debtor.

10 As to the U.S. Trustee's point, there is no sealing  
11 motion here. We're not asking anything be sealed because  
12 we're not asking to file anything.

13 THE COURT: You are. You're asking -- you're  
14 proposing to file -- here it is. I got a disk and I got an  
15 order.

16 MR. LESNIAK: We're not asking to file --

17 THE COURT: And it's called stipulated order, and it  
18 has a -- you've -- Mr. Wiener has signed it, Mr. Shaev has  
19 signed it, and there's a place for me to sign it.

20 MR. LESNIAK: Your Honor, we are not asking for that  
21 Court order to be sealed.

22 THE COURT: Oh, I understand that.

23 MR. LESNIAK: Okay.

24 THE COURT: It's just the terms of the settlement  
25 that you don't want sealed -- that --

1 MR. LESNIAK: No, we don't -- we're not even  
2 providing it to -- but let me give another example. Let me  
3 go a little bit different direction to point out what we're  
4 doing here.

5 It would, I would suggest --

6 THE COURT: Just hold on, Mr. Lesniak. Paragraph 3  
7 of the stipulated order provides:

8 "In order to avoid the costs and expenses of  
9 litigation of the cross-motion, and without any  
10 admission of liability, William and Chase have  
11 entered into a settlement agreement and release with  
12 respect to the cross-motion, the terms and  
13 conditions of which the parties have agreed to keep  
14 confidential, except to the extent disclosed  
15 herein."

16 MR. LESNIAK: Yes. That's correct, Judge.

17 What I'm suggesting is this: If, after the cross-  
18 motion had been filed, and Mr. Shaev and I had our  
19 negotiations, and Chase and Mr. Pawson agreed to a  
20 settlement, if all Chase had done was pay X dollars to Mr.  
21 Pawson, and Mr. Shaev had withdrawn his cross-motion, there  
22 would be nothing pending further before the Court. And I  
23 suggest that he could well have done that.

24 The only reason we're here is that Mr. Shaev said, I  
25 would like the Court to order Chase to do certain things as



1 part of this settlement. And we said, okay. But, certainly,  
2 if -- if Mr. Shaev had withdrawn his motion, I would suggest  
3 that the U.S. Trustee would have no objection to it, the  
4 Chapter 13 trustee would have no objection to it; it would  
5 have been what it truly was: A matter settled between the  
6 parties, Chase withdrew its MFR, Mr. Shaev would withdraw the  
7 debtor's cross-motion, and the matter would be concluded  
8 except to the extent Your Honor is interested in pursuing a  
9 rule to show cause, which is, as I mentioned earlier,  
10 certainly perfectly free to do. We're not in any way able,  
11 if we even desired to, to prevent you from doing that.

12 So this is really no different than that situation.  
13 And we could have resolved this matter, and I suppose we  
14 still even could, if Mr. Shaev didn't insist on the Court's  
15 ordering things, settle it in a private way and simply  
16 withdraw the motion. And this is -- none of the parties, the  
17 Chapter 13 trustee or trustee -- U.S. Trustee, I would  
18 suggest, would have really been looking behind that to see  
19 what the settlement terms were, or why Mr. Shaev withdrew the  
20 motion, or why Chase withdrew its MFR.

21 Thank you, Judge.

22 THE COURT: Thank you, Mr. Lesniak.

23 Mr. Shaev, do you want to be heard further?

24 MR. SHAEV: No, Your Honor.

25 THE COURT: Why did you insist on it being in an

1 order approved by the Court?

2 MR. SHAEV: Well, there are terms in that order that  
3 are very important to my client and myself, and under no  
4 circumstances was I going to file such a cross-motion and not  
5 have whatever settlement there was at least be so ordered by  
6 the Court. I wasn't going to take the chance of Your Honor  
7 saying we did this behind your back.

8 THE COURT: Thank you, Mr. Shaev.

9 Is Chase prepared to disclose the terms, Mr.  
10 Lesniak?

11 MR. LESNIAK: In camera, Your Honor?

12 THE COURT: No. On the record.

13 MR. LESNIAK: On the record?

14 THE COURT: Yes.

15 MR. LESNIAK: Can I take a moment to talk to my  
16 client about that?

17 THE COURT: Yes, you can.

18 MR. LESNIAK: Thank you.

19 (Counsel confer.)

20 MR. LESNIAK: May we step outside for a moment,  
21 please, Judge?

22 THE COURT: Yes, please, go ahead.

23 MR. LESNIAK: Thank you.

24 THE COURT: Yeah. Go ahead.

25 (Pause.)

1           MR. LESNIAK: I just wanted to ask for a  
2 clarification as to what the Court is asking. Are you asking  
3 Chase to disclose just the amount of the settlement? Or are  
4 you asking Chase to disclose the entire terms of the  
5 settlement --

6           THE COURT: The entire terms of the settlement.

7           MR. LESNIAK: Would that be in the form of reading  
8 it on the record, or filing it?

9           THE COURT: I'm going to want to hear Mr. Velez-  
10 Rivera on that subject.

11          MR. LESNIAK: Okay. Then if I can, Your Honor, I  
12 would ask to be able to communicate with Mr. Shaev as well  
13 because the settlement agreement has certain terms about  
14 confidentiality and we'd essentially be breaching the  
15 agreement. So I need to talk to him about that.

16          THE COURT: Okay. Mr. Shaev said something on the  
17 record last week that this wasn't his request for  
18 confidentiality that was involved, it was Chase's. But let's  
19 take a ten-minute break. Why don't you talk with Mr. Shaev?  
20 Also talk with Mr. Velez-Rivera because I consider the U.S. -  
21 - Ms. Kava, you're in -- you can do it in here because Ms.  
22 Kava is on the phone and she ought to hear this as well.

23           I consider the Chapter 13 trustee and the U.S.  
24 Trustee to be very important players in any decision about  
25 what happens here. I take -- I said this earlier. I mean, I

1 take Judge Lynch's decision in Geltzer and my own decision in  
2 Food Management Group as dealing with the importance of  
3 transparency in the Bankruptcy Courts as essential. And just  
4 so it's clear, I am not going to approve any order where all  
5 of the terms are not disclosed. That is -- that isn't going  
6 to happen.

7 MR. LESNIAK: Your Honor, may I suggest, then --

8 THE COURT: Just let me finish.

9 MR. LESNIAK: All right, I'm sorry.

10 THE COURT: I'm not anxious to have a protracted  
11 proceeding involving Mr. Wiener's firm and JPMorgan Chase  
12 Bank. I am very concerned, as I expressed earlier, about  
13 whether Judge Morris's message that she tried to convey in  
14 Schuessler has been heard. You've indicated changes that are  
15 being made. But, you know, I'm prepared to consider, and  
16 depending on what those terms are, approve -- consider, and  
17 if proper, approve a settlement of the matter, the terms of  
18 which are fully disclosed on the record.

19 And we'll take this ten-minute recess --

20 MR. LESNIAK: Understood, Your Honor. You may not  
21 need it. Could you give me two more minutes?

22 THE COURT: Well, I think it's important that you  
23 find out from Ms. Kava and Mr. Velez-Rivera what the position  
24 of the Chapter 13 trustee and the U.S. Trustee is to how this  
25 -- if you're prepared to disclose the terms on the record,

1 whether you need a revised stipulation and order, whether  
2 it's put on the record and a transcript being available on  
3 ECF. I want to hear what the U.S. Trustee -- if Chase is  
4 prepared to do that, and Mr. Shaev is prepared to do that,  
5 what Ms. Kava and the U.S. Trustee have to say about it are  
6 also important to me.

7 So let's take a ten-minute break.

8 MR. LESNIAK: Thank you, Judge.

9 (Recess taken at 10:53 a.m.)

10 (Proceedings resume at 11:07 a.m.)

11 THE COURT: Please be seated.

12 All right. We're back on the record in the matter  
13 of In Re William Robert Pawson, Number 05-18439.

14 Mr. Lesniak?

15 MR. LESNIAK: Your Honor, if I may address the  
16 Court, Chase is prepared at this point to right now read into  
17 the record the entire settlement agreement and release  
18 subject to a stipulation with Mr. Shaev that reading the  
19 settlement agreement into the record does not constitute a  
20 violation of any of the provisions of confidentiality or  
21 otherwise by either Chase or Mr. Pawson.

22 THE COURT: Mr. Shaev?

23 MR. SHAEV: That's agreed to, Your Honor.

24 THE COURT: Mr. Velez-Rivera, do you want to be  
25 heard? Are you satisfied with the -- what's been proposed?

1 And I'm going to ask Ms. Kava as well.

2 MR. VELEZ-RIVERA: With respect to the single point  
3 that reading the settlement agreement into the record won't  
4 constitute a breach thereof, we take no position on that.

5 THE COURT: No, I'm -- that wasn't what I was asking  
6 you about, really. Whether -- you know, I'm being asked to  
7 approve an order and the settlement between Pawson and Chase.  
8 The terms will be on the record. A transcript will be  
9 prepared and posted on ECF. And my question really goes to  
10 whether you're satisfied that that sufficiently addresses the  
11 public interest in the terms of any settlement being part of  
12 the public record.

13 MR. VELEZ-RIVERA: I think I better answer that with  
14 the admonition that the United States Trustee, regardless of  
15 whether Your Honor approves the settlement, fully reserves  
16 her rights vis-a-vis the movant, Chase in this case.

17 THE COURT: So does the Court.

18 MR. VELEZ-RIVERA: I understood that part. Thanks,  
19 Your Honor.

20 THE COURT: All right. Ms. Kava?

21 MS. KAVA: The Chapter 13 trustee has no opposition  
22 to, of course, the settlement being read.

23 THE COURT: All right. So let's proceed on that  
24 basis. Mr. Lesniak?

25 MR. LESNIAK: May I, Your Honor?

1 THE COURT: Yes, please.

2 MR. LESNIAK: Your Honor, what I'm reading into the  
3 record is a document entitled, "Settlement Agreement and  
4 Release." It reads as follows:

5 "This settlement agreement and release ("agreement")  
6 is entered into as of this 5th day of August, 2008,  
7 between William Robert Pawson ("William") and  
8 JPMorgan Chase Bank, N.A. ("Chase"), and is in the  
9 following terms and conditions."

10 The next section is headed, "Recitals:"

11 "Whereas, there is presently pending in the United  
12 States Bankruptcy Court for the Southern District of  
13 New York ("Court") that certain proceeding entitled  
14 In Re William Robert Pawson, Case Number 05-18439-MG  
15 ("bankruptcy case"), wherein William has filed a  
16 petition pursuant to Chapter 13 of the United States  
17 Bankruptcy Code, which proceeding remains pending,  
18 and whereas in the bankruptcy case, Chase heretofore  
19 filed a motion for relief from the automatic stay  
20 ("MFR") which MFR has been withdrawn, and, whereas,  
21 in the bankruptcy case, William has filed a response  
22 to motion for relief from the automatic stay and  
23 cross-motion pursuant to Bankruptcy Code Section 105  
24 and 28 U.S.C. 1927 ("cross-motion"), which cross-  
25 motion remains pending and undetermined, and whereas

1 Chase has denied any liability in connection with  
2 the cross-motion, and whereas William and Chase  
3 desire to fully settle, compromise and otherwise  
4 resolve their dispute with respect to the cross-  
5 motion and agree that it is in their respective best  
6 interests to compromise their dispute with respect  
7 to the cross-motion, specifically including the  
8 avoidance of the costs, expenses and inconvenience  
9 of litigation, and whereas William and his wife  
10 Janet Pawson ("Janet") have heretofore executed a  
11 certain cooperative apartment fixed rate note dated  
12 November 7, 2003, payable to Chase ("note"),  
13 together with a loan security agreement dated  
14 November 7, 2003 in favor of Chase ("mortgage")."

15 Then the next section is headed, "Settlement  
16 Provisions."

17 "Now, therefore, for good and valuable  
18 consideration, the receipt and sufficiency of which  
19 is hereby acknowledged, including without limitation  
20 the representations, promises and agreements set  
21 forth herein, and the limited joinder in this  
22 agreement by Janet and by David Shaev ("David"), as  
23 set forth herein below, the parties hereto agree as  
24 follows:

25 "Paragraph 1: Settlement payment. Within ten days



1 of the execution of this agreement, Chase will pay  
2 to William the sum of fifty thousand and zero one-  
3 hundreds dollars, \$50,000, by cashier's check upon  
4 execution of this agreement. Said payment shall be  
5 made payable to David, William's attorney. Said  
6 payment is intended to constitute a full and  
7 complete resolution of the cross-motion and any  
8 matters related to the cross-motion or the MFR,  
9 whether raised by William or otherwise.

10 Accordingly, in the event the Court sua sponte  
11 orders any monetary payment to be made by Chase to  
12 or for the benefit of William or David on account of  
13 the cross-motion or the MFR (separate and apart from  
14 the Court's approval of this agreement), then the  
15 amount paid under this paragraph will be offset  
16 against the amounts ordered to be paid by the Court.  
17 If necessary to comply with this paragraph, William  
18 will return to Chase the payment referred to in the  
19 first sentence of this agreement to the extent, and  
20 only to the extent that Chase is otherwise obligated  
21 to pay any sum to William and/or David pursuant to  
22 an order of the Court. As an example, if the Court  
23 sua sponte enters an award to William of \$20,000,  
24 said \$20,000 will be offset against the \$50,000 paid  
25 pursuant to the first sentence of this paragraph,

1 and Chase will owe nothing more to William, or, as  
2 another example, if the Court sua sponte orders  
3 Chase to pay William \$60,000, then \$50,000 of that  
4 \$60,000 would be deemed paid pursuant to this  
5 paragraph, and Chase would only owe William an  
6 additional \$10,000.

7 "Paragraph 2: Credit reporting repair. Within  
8 thirty days from the date hereof, Chase will take  
9 any and all action required or necessary to remove  
10 any negative credit reporting made by Chase to any  
11 credit reporting agency as to William and/or Janet  
12 regarding payments due under the note for May 2008  
13 and June 2008.

14 "Paragraph 3: Current loan information. Within ten  
15 days from the date of this agreement, Chase will  
16 provide to William a current transaction history for  
17 the loan represented by the note and mortgage,  
18 together with a then current payoff statement for  
19 said loan. Chase shall be deemed to have complied  
20 with this Paragraph 3 if it provides the information  
21 to David.

22 "Paragraph 4: Qualified written request. In the  
23 event that William or Janet makes a qualified  
24 written request pursuant to 12 U.S.C. Section 2605,  
25 it is deemed to be made separate and apart from this

1 agreement, and Chase's response thereto shall be  
2 made separate and apart from this agreement,  
3 provided, however, that William and Janet agree that  
4 if a qualified written request is made by or on  
5 behalf of either of them with respect to the loan  
6 represented by the note and mortgage, it will made  
7 to the attention of James P. Berg, Vice President  
8 and Assistant General Counsel, JPMorgan Chase Bank,  
9 N.A., Chase Home Finance Division, 194 Wood Avenue  
10 South, Second Floor, Iselin, New Jersey --" I hope  
11 I pronounced that correct, Judge -- "08830.

12 Paragraph Number 5 entitled "Waiver of charges  
13 related to MFR:"

14 "Chase agrees that no charges (such as filing fees  
15 or attorneys' fees) with respect to the MFR will be  
16 added to or charged to the loan represented by the  
17 note and mortgage, and any such fees and costs are  
18 specifically waived as to William and Janet.

19 "Paragraph 6: Withdrawal of MFR. As noted in the  
20 foregoing recitals, the MFR has been heretofore  
21 withdrawn. Chase represents that the MFR has been  
22 withdrawn with prejudice as to any payments due  
23 under the note prior to August 1, 2008, but not as  
24 to any payments coming due on the note after August  
25 1, 2008.

1 "Paragraph Number 7: Post-discharge Notification.

2 In the event William receives a discharge in the  
3 Bankruptcy case, within thirty days after the entry  
4 of the order of discharge Chase will provide to  
5 William written notice by regular first class mail  
6 of any outstanding fees or costs assessed to the  
7 loan account represented by the note and mortgage  
8 (such as late charges, property inspection fees,  
9 attorneys' fees, or filing fees not otherwise waived  
10 pursuant to Paragraph 5 of this agreement). The  
11 rights of William and/or Janet to contest any such  
12 fees or costs are fully preserved herein. If Chase  
13 fails to give the written notice provided for in the  
14 first sentence of this paragraph, then all such fees  
15 or costs, if any, shall be deemed waived by Chase.  
16 Chase shall be deemed to have complied with this  
17 Paragraph 7 if it provides the information to David.

18 "Paragraph 8: Confidentiality. William, Janet and  
19 David hereby agree, except to the extent required to  
20 comply with this agreement or to secure the approval  
21 of the Bankruptcy Court after proper notice and a  
22 hearing, or pursuant to a subpoena or as otherwise  
23 may be required by any applicable law, rule, or  
24 regulation not to directly or indirectly disclose,  
25 divulge, publicize or publish to any other entity or

1 individual for any purpose the terms of this  
2 agreement, except and only to the extent of the  
3 existence of this agreement and the terms that may  
4 be set forth in any Court order entered in the  
5 Bankruptcy case pursuant to this agreement.  
6 Notwithstanding the preceding sentence, disclosure  
7 of the settlement amount to the Bankruptcy Court may  
8 only be made in the manner that is not in the public  
9 record (such as in chambers). In the event William,  
10 Janet or David is asked about this case, he/she may  
11 state that the matter has been resolved by the  
12 mutual agreement of the parties and refer to the  
13 official court record. Notwithstanding the  
14 preceding, William may disclose the terms of this  
15 agreement to his attorney, to those employees and  
16 contract assistants employed by his attorney who  
17 need to know the terms of this agreement in order to  
18 perform their job assignments or tasks assigned to  
19 them, his accountant, any state or federal agency in  
20 connection with the requirement to file any annual  
21 or periodic reports, and tax preparers, as  
22 necessary. William, Janet and David agree that  
23 he/she will not provide information or testimony in  
24 any legal action against Chase concerning the terms  
25 of this agreement except pursuant to a subpoena, and

1           that he/she will notify Chase within five business  
2           days of any subpoena or informal request to testify  
3           that he or she receives. Such notice may be given  
4           by e-mail addressed to James P. Berg at  
5           JimPBerg@JPMorganChase.com, by facsimile addressed  
6           to James P. Berg at 732-452-8035, or by a letter  
7           mailed by certified mail, return receipt requested,  
8           to James P. Berg, Vice President and Assistant  
9           General Counsel, JPMorgan Chase Bank, Chase Home  
10          Finance Division, 194 Wood Avenue South, Second  
11          Floor, Iselin, New Jersey, 08830. In the event of a  
12          letter, notice shall be deemed given on the date of  
13          the postmark on the letter. Nothing in this  
14          agreement will prohibit or restrict William, Janet  
15          or David from providing information or otherwise  
16          testifying or assisting in any governmental or  
17          regulatory investigation. In making any permitted  
18          disclosure pursuant to this Paragraph 8, William,  
19          Janet and/or David will also inform the recipient of  
20          the disclosure that the terms and conditions of this  
21          agreement are subject to the provisions of a  
22          confidentiality agreement, and are to be kept  
23          confidential by the recipient. It is expressly  
24          understood and agreed that this confidentiality  
25          provision is an essential provision of this

1 agreement.

2 "Paragraph 9: Withdrawal of Cross-motion. Upon  
3 execution of this agreement, William will promptly  
4 withdraw the cross-motion with prejudice in the  
5 bankruptcy case. Withdrawal of the cross-motion  
6 will be accomplished by a stipulated order in a form  
7 to be agreed upon by William and Chase, which order  
8 shall include language that orders Chase to comply  
9 with the provisions of Paragraphs 2, 3, 5, 6 and 7.  
10 However, the amount of the payment set forth in  
11 Paragraph 1 of this agreement shall only be  
12 disclosed to the Court in the bankruptcy case in  
13 accordance with the provisions of Paragraph 8  
14 hereinabove."

15 Paragraph 10, entitled, "Release regarding cross-  
16 motion:"

17 "William hereby releases, acquits and forever  
18 discharges Chase, its current and former affiliates,  
19 predecessors, successors, assigns, and all of their  
20 respective current and former agents, directors,  
21 officers, and employees from all actual,  
22 consequential, and exemplary damage, loss, claims,  
23 demands, expenses, liabilities, obligations, actions  
24 and causes of action whatsoever which he may now  
25 have or claim to have against Chase relative to or

1 related to the cross-motion and/or the obligations  
2 set forth in the cross-motion.

3 "Paragraph 11: Release regarding credit reporting.  
4 Provided that Chase complies with Paragraph 2 of the  
5 agreement, William and Janet hereby release, acquit  
6 and forever discharge Chase, its current and former  
7 affiliates, predecessors, successors, assigns, and  
8 all of their respective current and former agents,  
9 directors, officers, and employees from all actual,  
10 consequential, and exemplary damages, loss, claims,  
11 demands, expenses, liabilities, obligations, actions  
12 and causes of action whatsoever which he or she may  
13 now have or claim to have against Chase relative to  
14 or related to any credit reporting by Chase to any  
15 credit reporting agency solely with respect to the  
16 payments due May 2008 and June 2008 under the note.

17 "Paragraph 12: Counterparts and signatures. This  
18 agreement may be signed in counterparts and which,  
19 taken together, shall constitute a binding and  
20 enforceable agreement in accordance with its terms  
21 and conditions. A facsimile or .pdf signature sent  
22 via facsimile with a confirmation receipt or by e-  
23 mail as evidence of same shall be deemed an original  
24 counterpart for purposes of this agreement.

25 "Paragraph 13: Binding agreement. This agreement



1 shall enure to the benefit of and be binding upon  
2 the successors and assigns of the parties hereto.

3 "Paragraph 14: Professional fees. Each of the  
4 parties hereto shall bear and be responsible for his  
5 or its own professional fees, including without  
6 limitation, attorneys' fees in connection with this  
7 agreement."

8 Paragraph 15, entitled, "The entire agreement."

9 "This agreement represents and constitutes the  
10 entire agreement and understanding between the  
11 parties, the subject matter hereof, and all previous  
12 statements or understandings, whether expressed or  
13 implied, oral or written, shall be superseded by  
14 this agreement. Any modifications of this agreement  
15 must be in writing and signed by the parties  
16 affected by such modifications.

17 "Paragraph 16: Governing law. This agreement shall  
18 be interpreted and the rights and liabilities of the  
19 parties hereto shall be determined in accordance  
20 with the internal laws (as opposed to conflicts of  
21 law provisions) of the State of New York.

22 "In witness whereof, the parties hereto voluntarily  
23 and intending to be bound thereby do execute these  
24 presence this 5th day of August, 2008."

25 There's a signature line, "Executed by JPMorgan

1 Chase Bank, N.A. by Thomas E. Reardon (phonetic), its  
2 assistant vice president."

3 There's a signature line, "Executed by William  
4 Robert Pawson."

5 We're almost done, Judge. There's one --

6 THE COURT: It's okay, Mr. Lesniak.

7 MR. LESNIAK: -- additional paragraph. It is  
8 called, "Limited joinder of parties." And it reads:

9 "For good and valuable consideration, the receipt  
10 and sufficiency of which is hereby acknowledged,  
11 including but not limited to Chase's execution of  
12 the foregoing agreement with William, Janet Pawson  
13 executes this agreement for the limited purpose of  
14 being bound by the provisions of Paragraphs 4, 8 and  
15 11, and David Shaev executes this agreement for the  
16 limited purpose of being bound by the provisions of  
17 Paragraph 8."

18 There are then signatures by Janet Pawson and David  
19 Shaev. That is the agreement in its entirety, Your Honor.

20 THE COURT: Thank you, Mr. Lesniak.

21 Now let me ask whether the U.S. Trustee or the  
22 Chapter 13 trustee wishes to be heard with respect to whether  
23 the Court should approve the order.

24 Let me say that, with respect to the order that was  
25 -- the stipulated order submitted to the Court, I have added

1 the following at the end of Paragraph 3. Let me -- I think  
2 Mr. Velez-Rivera doesn't have it. Paragraph 3 in the text  
3 that's there reads, quote:

4 "In order to avoid the costs and expenses of  
5 litigation of the cross-motion and without any  
6 admission of liability, William and Chase have  
7 entered into a settlement agreement and release  
8 (agreement) with respect to the cross-motion, the  
9 terms and conditions of which the parties have  
10 agreed to keep confidential, except to the extent  
11 disclosed herein."

12 Immediately following thereafter, in brackets, I  
13 have added:

14 "All terms of the settlement were disclosed on the  
15 record in open court on August 13, 2008. A copy of  
16 the transcript will be prepared and posted on ECF."  
17 Close bracket, and then my initials following it.

18 Mr. Velez-Rivera, do you want to be heard with  
19 respect to whether the Court should provide -- give its  
20 approval to the order?

21 MR. VELEZ-RIVERA: Your Honor, I have to reiterate  
22 something once, that the --

23 THE COURT: Without prejudice to whatever rights the  
24 U.S. Trustee --

25 MR. VELEZ-RIVERA: And I need to be very precise

1 about that, Your Honor.

2 THE COURT: Okay.

3 MR. VELEZ-RIVERA: The settlement, in the event  
4 approved by the Court, from my client's perspective does not  
5 prejudice the right of the United States Trustee to take  
6 action against Chase to the extent the United States Trustee  
7 deems it appropriate under 28 U.S.C. Section 586 and Section  
8 307 of the Bankruptcy Code.

9 There were a couple of features, hearing them for  
10 the first time, Your Honor, and not being able to read them  
11 makes them a little difficult to absorb. But it appeared  
12 that at least one of the provisions can be construed as tying  
13 the Court's hands with respect to the payment and the  
14 offsetting mechanism later on. I'll leave that up to Your  
15 Honor because we were listening to it, and we only got that  
16 one shot.

17 THE COURT: Right.

18 MR. VELEZ-RIVERA: And that might not be the case.

19 But in the event it does do that, we think it is an  
20 inappropriate provision.

21 And then, finally, we may seek the debtor's  
22 cooperation later on under a variety of federal statutes,  
23 including the Right to Financial Privacy Act. We would like  
24 that, in the event the settlement is approved, that the order  
25 make clear that it should not interfere with the exercise of

1 my client's rights under that federal statute, among others,  
2 or be deemed to limit the debtor's ability to cooperate with  
3 my office, including giving testimony before this Court.

4 That's all I have, Your Honor.

5 THE COURT: Thank you. Ms. Kava?

6 MS. KAVA: I'm going to go along with everything  
7 that the U.S. Trustee said. My only question is all those  
8 paragraphs about the debtors keeping confidential all the  
9 terms of the agreement and not to reveal all these things, it  
10 seems to me that that's all moot now that it's on the record.

11 THE COURT: Well, it's in -- what's been read is an  
12 agreement. The terms of the settlement are all now part of  
13 the public record.

14 MS. KAVA: Exactly. So all those terms are pretty  
15 much meaningless since they already are now part of the  
16 public record.

17 THE COURT: Well, they're in a written agreement  
18 that was signed by the parties. I think once matters are  
19 fully disclosed on the record, so much for the  
20 confidentiality.

21 MS. KAVA: Right. The trustee is fine with the  
22 terms of it, Your Honor.

23 THE COURT: All right. Mr. Lesniak, Mr. Velez-  
24 Rivera raised the issue about the debtor's cooperation with  
25 the U.S. Trustee. The stipulation is you -- the settlement,

1 as you read it, had a provision that required a subpoena.

2 Is it your position that in order for the debtor to  
3 cooperate with the U.S. Trustee if I approve this order, they  
4 would be required to only cooperate if they receive a  
5 subpoena?

6 MR. LESNIAK: If you give me a moment, Your Honor.  
7 I thought there was a provision that addressed that.

8 It says -- I think it said that if they gave -- got  
9 a subpoena, they'd have to notify us. But there's a  
10 paragraph -- a sentence that says, "Nothing in this agreement  
11 will prohibit or restrict William, Janet or David from  
12 providing information or otherwise testifying or assisting in  
13 any governmental or regulatory investigation."

14 THE COURT: All right, thank you.

15 MR. LESNIAK: I think that covers it, Your Honor.

16 THE COURT: I think it does. Mr. Velez-Rivera, are  
17 you comfortable having heard that again?

18 MR. VELEZ-RIVERA: If the phrase "governmental  
19 investigation" is construed broadly, then I'm okay.

20 THE COURT: I would certainly construe it as  
21 including your office.

22 MR. VELEZ-RIVERA: Thank you, Your Honor.

23 THE COURT: You're part of the Department of  
24 Justice.

25 MR. LESNIAK: Your Honor, if I may, I just had -- it

1 was our intention to settle this matter on a private basis  
2 without restricting anyone's rights, any public official, and  
3 as you can see, clearly contemplating that the Court would  
4 have the ability to take action on its own. So we are not  
5 intending to, by our private agreement, restrict what the  
6 U.S. Trustee or the Chapter 13 trustee does.

7 THE COURT: Right. I'm going to go ahead and  
8 approve the order as submitted, with the addition to  
9 Paragraph 3 that I read into the record.

10 Now I expressed my concern earlier. As Mr. Shaev  
11 has demonstrated in this and other matters, he's extremely  
12 capable and able of representing his clients' interests. The  
13 bigger concern to me, Mr. Lesniak, as I explained, are pro se  
14 debtors and debtors who are represented by counsel who are  
15 less able or willing to defend themselves.

16 You had indicated that Chase has changed its  
17 internal procedures. And, obviously, the U.S. Trustee's  
18 Office will determine what, if anything, they're going to do  
19 further.

20 I am not anxious to enter an order to show cause and  
21 launch a protracted proceeding, but what I would like to do  
22 is this. I would like to ask Mr. Lesniak and Mr. Wiener and  
23 Mr. Berg, in-house counsel at Chase, to confer with Mr.  
24 Velez-Rivera and Mr. Zipes from the U.S. Trustee's Office  
25 came in, didn't make an appearance on the record, came in

1 when the hearing was underway -- confer with Mr. Velez-Rivera  
2 and Mr. Zipes. If the U.S. Trustee chooses to pursue this  
3 issue informally, at least -- it's all well and good, Mr.  
4 Lesniak, for you to state on the record what procedures Chase  
5 has now put in place since the cross-motion in Pawson was  
6 filed, but that has no teeth to it.

7           As I indicated, this was clearly a motion to lift  
8 the automatic stay that never should have been filed, and one  
9 or two phone calls would have made that imminently clear.  
10 What I would like to give you, Mr. Lesniak and  
11 representatives of the U.S. Trustee, two weeks to discuss the  
12 matter and see whether you're able to -- on behalf of Chase,  
13 and Mr. Berg, you're here and it's very important that you be  
14 involved -- that Chase be prepared to document procedures  
15 that will be followed certainly in the Southern District of  
16 New York with respect to lift-stay motions and other matters.

17           Obviously, I can't at this stage require or compel  
18 Chase to do anything. I'm not trying to do that. But what  
19 I'm asking is if two weeks from today I would say -- what's  
20 the date of that? Yes, by 5 p.m. August 27th, I would like  
21 to receive a letter from you, Mr. Lesniak, indicating whether  
22 -- what the status of matters, whether you're able to reach  
23 any resolution of the issues that are of concern to me with  
24 the U.S. Trustee's Office, and I'll decide -- so I'm not  
25 going to enter any order to show cause now. I'll await



1 hearing whether you're able to deal with this matter with the  
2 U.S. Trustee and, if appropriate, if you've reached agreement  
3 and the U.S. Trustee wants to bring it back to me in this  
4 case, I think that's appropriate. There certainly have been  
5 other matters -- sanction matters, Mr. Lesniak, where the  
6 U.S. Trustee's Office has, after I've entered an order to  
7 show cause, has pursued matters and worked out agreements  
8 with counsel, in fact, and brought it to the Court for  
9 approval. And while it was entered in a specific case, the  
10 order was more, you know, broader in its effect.

11 I'm not out on any witch hunt. I want to make that  
12 crystal clear. But what I am very concerned about is what I  
13 said. I mean, if Chase has adopted satisfactory procedures -  
14 - look, mistakes happen, things happen. That's -- nothing is  
15 going to be -- I don't think anything is going to be error  
16 free. But what concerns me is, after reading Schuessler when  
17 Judge Morris published it, having seen the papers here, it's  
18 kind of two strikes. Three strikes and you're out, frankly.

19 So if you've reached some agreement with the U.S.  
20 Trustee and bring that back, that's fine; if not, I'll  
21 decide. You don't have to go into details about the  
22 discussions with the U.S. Trustee. I just need to know  
23 whether you've reached some agreement. If not, tell me that,  
24 and I'll decide whether to enter an order to show cause at  
25 that time.

1           If I decide not to, the one thing I want to make  
2 crystal clear on the record today is -- and you better look  
3 at whatever in the next -- I don't know what's coming up in  
4 front of me next week as a Chapter 13 day. I don't know  
5 whether I have any lift-stay motions from Chase that are  
6 coming on next Thursday. But you better look and find out.  
7 And somebody better look and see whether the factual basis  
8 for any motion is a solid one. I will absolutely flyspeck  
9 any papers that are before me in any lift-stay motions in  
10 which Chase is the moving party.

11           I want to make clear, we're -- 362 is there for the  
12 protection of creditors and I regularly grant motions to lift  
13 stay when it's appropriate. You know, I'll do so with  
14 respect to Chase. But I want to be sure that they're right.  
15 So see what you're able to -- if you're not prepared to  
16 discuss it with the U.S. Trustee, or if they don't want to  
17 discuss it with Chase, that's fine. But I'm going to sort of  
18 allow this two-week window. If you're in, you know,  
19 continuing to have discussions and you want some more time,  
20 if you can agree on that with the U.S. Trustee, August is a  
21 difficult time to get things done, but if, you know, you can  
22 -- and, obviously, copy the U.S. Trustee on the letter you  
23 send to the Court.

24           Anybody else have anything they want to raise? Mr.  
25 Velez-Rivera, or Mr. Shaev? Go ahead, Mr. Shaev.

1 MR. SHAEV: Just one thing. I'd like for counsel  
2 for debtor, myself, to be cc'd on any correspondence --

3 THE COURT: That's fine.

4 MR. SHAEV: -- during this transaction period.

5 THE COURT: I would agree with that, Mr. Shaev. Mr.  
6 Velez-Rivera?

7 MR. VELEZ-RIVERA: Your Honor, I'll volunteer --

8 THE COURT: I didn't mean to put the burden on you -

9 -

10 MR. VELEZ-RIVERA: That's okay.

11 THE COURT: -- on this, but --

12 MR. VELEZ-RIVERA: Oh, no, that's okay.

13 We will endeavor to send the Court a letter also on  
14 the 27th at 5 o'clock so you know where we are. It's the end  
15 of August. We need to wait for a transcript. So I can also  
16 see myself asking you for more time.

17 THE COURT: That's fine. If, in two weeks -- look,  
18 if you've had a discussion and you're not getting anywhere,  
19 let me know that and then I'll decide what to do. But if  
20 you've had some discussions and you think more time is  
21 needed, I'm going to be amenable to giving you more time.  
22 I'm not anxious to enter -- at this stage, to enter an order  
23 to show cause and launch a whole evidentiary hearing. But if  
24 I have to, we'll do it.

25 Mr. Lesniak?

1 MR. LESNIAK: Your Honor, if I may, any letter that  
2 we would send in to the Court would be one that would either  
3 be jointly with the trustee, or certainly would be seen and  
4 approved by the trustee beforehand.

5 THE COURT: I understand.

6 MR. LESNIAK: We're not going to --

7 THE COURT: I understand. Whether I get one letter  
8 or two letters, that's fine. You work it out between you.  
9 Okay?

10 MR. LESNIAK: We will, Judge.

11 THE COURT: Anything else I need to address today?  
12 All right, we're adjourned. Thank you very much, everybody.

13 (Proceedings concluded at 11:40 a.m.)

14 \*\*\*\*\*

15 CERTIFICATION

16 I certify that the foregoing is a correct transcript  
17 from the electronic sound recording of the proceedings in the  
18 above-entitled matter to the best of my knowledge and ability.

19

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22

23

24

25



August 13, 2008

Cathryn Lynch, NJ Cert. No. 565

Certified Court Transcriptionist

Rand Reporting & Transcription, LLC